

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM BAKER,	§
	§
Defendant Below-	§ No. 164, 2011
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID Nos. 0701011608 and
Plaintiff Below-	§ 0911019180
Appellee.	§

Submitted: June 7, 2011
Decided: August 17, 2011

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 17th day of August 2011, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The defendant-appellant, William Baker, filed this appeal from the Superior Court's sentence following a violation of probation (VOP) hearing. The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Baker's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Baker pled guilty on August 9, 2007 to one count each of felony theft and second degree conspiracy. The Superior Court

immediately sentenced him to a total period of four years at Level V incarceration, with credit for one day served, to be suspended immediately for one year at Level III probation followed by two years at Level I probation (restitution only). Baker violated the terms of his probation and was resentenced several times for these violations.

(3) On March 2, 2010, Baker pled guilty to a charge of felony theft and was sentenced to two years at Level V incarceration, to be suspended for one year at Level IV (residential drug treatment), to be suspended upon the successful completion of treatment for one year at Level III (aftercare). Additionally, as a result of his 2010 guilty plea, Baker also was found in violation of his 2007 sentence. For that VOP, his fourth, the Superior Court sentenced him to a total period of three years and eight months at Level V incarceration (with credit for 122 days served), to be suspended entirely for one year at Level III (aftercare) followed by two years at Level I (restitution only).

(4) On January 14, 2011, Baker violated his probation on both his 2007 and 2011 convictions. He was sentenced to a total period of five years and four months at Level V incarceration, with credit for 3 months served, to be suspended for two months at Level IV (VOP Center), to be followed by seven months at Level IV (work release), to be followed by one year at Level II probation and three years and four months at Level I probation (restitution only). On March 17, 2011, Baker

again was found in violation of his two previous sentences. He was sentenced to a total period of four years and four months at Level V incarceration, to be suspended immediately for four months at Level IV (VOP Center), followed by three years and four months at Level I probation. It is from this sentence that Baker appeals.

(5) In his opening brief on appeal, Baker contends that he was not properly credited with time he served at Level V toward his Level IV (VOP Center) sentence. Baker contends that he was sentenced to the VOP Center effective March 17, 2011 but that he was held at Level V and not transferred to the VOP Center until April 20, 2011. Baker contends that the DOC erroneously calculated the starting date on his Level IV sentence as April 20 instead of March 17.

(6) As the State points out, however, Baker was arrested on new charges of possession of marijuana and promoting prison contraband on March 4, 2011 while he was serving the two-month Level IV (VOP Center) portion of his January 2011 sentence. He was held at Level V on those new charges until he pled guilty to one count of promoting prison contraband and was sentenced on April 20, 2011. The amount of time he was held at Level V on his latest arrest was credited toward his April 20, 2011 sentence. Thus, he was not entitled to be credited a second time toward his March 17, 2011 sentence.*

* See *Brisco-Bey v. State*, 1993 WL 78216 (Mar. 13, 1993).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice